

QIKJS-Part.0.F

Qualitative Inquiry of Korean Judicial System

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The Dissertation Topic and Research Problem

The dissertation topic and research problem was presented under the title, Dissertation Premise, in which I argue the public administration on the Korean judicial system has been unfairly uncovered, while often argued in less systemic way or heavily tilting on the narrative of practical shortcomings or decay of concerned intellectuals. In this backdrop, my research focus would provide a framework of description on the topic, and propose the findings that are hopefully useful to the field of public administration and legal system, as well as suggestion for the improvement and administrative reform or insights for better world view concerned of this topic. Now that the view assuming a maturation of Korean republic is tenable in terms of national legacy -- historical lesson and success of democratic movement as well as dominance of pluralistic values in Korean community -- the traditional approach on the tenet of liberalism and modern constitutionalism can more properly be deferred to more plausible alternative. I consider the communitarian critique is a powerful tool to investigate the Korean struggle or progress with the PAKJ (Kymlicka, 1988; Walzer, 1990). This does not mean that the liberalism is irrelevant or outmoded -- rather does it stand at the pillar of discourse -- in which the constant comparative evaluation is necessary across the significant stage of PAKJ and historical environment. The lack of scientific deals and analysis in the current literature also will be addressed by being indebted to the theory on policy diffusion, in which a systemic and precise account of adoption or resilience of new administrative policy can be provided as involved with the judicial system (Valente & Davis, 1999; Wejnert, 2002). The new version with a dose of these tools of analysis will allow a scholarly and intellectual sharing of PAKJ to become more ordinate and systemic so that ultimately contributes to the scholarship of this field.

Literature Review and Research Focus

In dealing with the PAKJ, scholars generally have an agreement that 1987 constitution historically would be most significant and the constitutional practice, especially of constitutional politics -- with some modest effect on the distortion of sound judicial system -- can well be noted in distinction by means of that time division.¹ Hence the deals of research

¹ The dictatorship in the developmental paradigm of rule in new republics generally effects on the community in general. Besides its impact on the politics, such as suppression on free press and long reigns in period, the

can be sectioned in due effect of that perspective between pre-1987 judicial administration or system and that of post-1987 constitution (Han, 2014). In the first time period, one can agree that it differs -- even with public experience and sensibility around three stages in fair distinctiveness; (i) the ideology and politics have been contested to create the constitution and modern judiciary (1945-1948) (ii) classic years that was implanted with the noble nature of judiciary by legal acculturation of Japanese imperialistic system (1948-1960) (iii) period of frozen judiciary under the charismatic leadership of national development planning. In the second period of post-1987 constitution, we may experience heydays of new democratic surge, so that original and liberal democracy became to be restored in place and public demand for better judicial system had been voiced with the civilian leadership. In the period, administrative issues of Korean judicial system can comparatively be studied with those of advanced countries and society has bloomed with the freedom of expression and democratic wisdom. It is scientific in terms of legal parlance, but came fragmented as ad hoc with the changing political atmosphere or unorganized as lacking a consistent and scientific lens of analysis (2014).

I am exploring to narrow the focus of studies, but I still consider some grand scale of historical and contemporary debate within my capture is necessary since the kind of deals could unearth the comparative information along the transformation of society and political history. Then my chapters will be expected to deal with eight sections, in which the first three periods will be covered by three chapters and five major administrative issues as developed since the post-1987 constitution will be done by other five chapters. The research method I plan to implement would be a mixed method, and I consider 30 key senior and junior judges, prosecutors and attorneys will be participating. The survey questionnaires will initially be mailed to investigate what are the key administrative issues of Korean judicial administration as developed upon the post-1987 constitution. Then 15 participants will be sought to conduct an in-depth interview that collects the data (i) the attitude and views of political ideology between the liberalism and communitarianism (ii) the characteristics of innovations, innovators and especially environmental system to adopt the import of foreign system and reform policies on the KJS. My preliminary result shows to encompass the triad of judicial organizations (i) publicly desirable appointment of judges or supreme court justices involved with the judiciary (ii) safeguard of political neutrality and correction of conservative or bureaucratic prosecution office as involved with the prosecution office (iii) public aid of legal counseling or assistance, attorney production system and legal education, and specialty registration system of attorney with the bar association (Hwang, 2012). These five issues would consist with the current view of major jurists that will be investigated in terms of two theories or frameworks. As we note, the input of personnel resources is most contentious, and organizational practice or goals normally rises as a sensitive public issue in case of justice offices within the executive. In terms of bar association, the attorney qualification and legal education -- the kind of input issue of personnel resources -- are equally at matter with other important points of public interest, say, the competitive legal service and public aid system for the indigents (Yang, 2013).

Linked to the Discipline of Public Administration

judiciary also would be affected, but in less saliently.

The topic needs to be relevant and suited with the discipline of public policy and administration (Kim, 2014; 2015a,b). One article had an interest in this concern, which made a point by arguing on the new partnership between the law and public policy (Rosenbaum, 1987). The author pointed out a feasibility of adaptation in response with the emergence of the contemporary administrative state. The partnership has been reinforced with the backdrop (i) greater constitutional protections for individuals as they come into contact with public administration (ii) the public law litigation, which is a vehicle for judicial involvement in the reform of public institutions, (iii) an expansion of public administrator's legal liability. This transformation or new phenomena, according to the author, had an impact on the traditional administrative culture's values and its cognitive or evaluative orientations (1987). The argument and proposition would be one important lens to investigate the process and ideological critiquing of the major agendas of judicial reform. For example, the law school system, as a unique avenue for the qualification of lawyer, is being continually challenged and disputed involved with the equal protection of laws and basic right to public office or occupation (Yang, 2013). We can phase in two areas of interplay between law and public policy provided that the policy reform toward the American mode of legal education had been designed and enforced as a matter of national globalization plan by the policy makers of the government and civil group as well as public opinion leaders. Hence the narrative is grounded on the terms and phrases of two disciplines. My dissertation topic is fairly oriented to the theme of judicial reform, whose approach is a common theme in American public administration. In the article dealing with the reform of personnel practices, the authors examined the extent of implementation concerned of the personnel reforms by the state governments (Kellough & Selden, 2003). Given the reform is a common theme in the discipline, the reform index is helpful that the author documented the considerable variation among the states in their approach to personnel practices. The index illustrates the level of unemployment within a state and the proportion of state employees associated with public employee unions as a negative factor while the legislative professionalism is one positive factor for the reform of personnel practices (2003). While the judges or lawyers may not be an employee in strict terms of Korean unionism, the organizational turf or concept of vested rights fairly had been a negative element against the reform of their staffing or qualification endorsement practice. For example, the bar association can be seen a quasi-labor union although it is a voluntary association, and the basic tone of judiciary in personnel practice largely has long been insulated from the concurrent sensibility of public. That impedes a progressive reform on this agenda. For example, the recruitment of new lawyers had long been shackled in small number by the influence of bar association. The diversification about the background and ideology of justices in the process of selection often had not been satisfactory against the wishes and public anticipation. While the communitarianism as an agent of policy philosophy is not certain which path is more solid with the Korean community, the staffing practice generally had been and currently is being a usual subject of public skepticism. Although the law school reform had been implemented years ago and earned some ground as a public institution, the current issue remains to be testified if it should be a sole avenue to crown the qualification as a lawyer (Yang, 2013).

Provided that economic reality, public belief and awareness as well as common perception or culture on this agenda can be shared, the political morality and conception of community-wise public policy needs an in-depth inquiry of ideological consensus on these issues. According to Peters & Pierre, the concept of governance has come to be used more

commonly in the discussion of public administration, especially if we see a growing body of European literature that stresses the importance of networks, partnerships, and markets (1998). If I plan to deal with the legal service and market issues as a contemporary challenge on the PAKJ, this viewpoint is relevant and falls within the kind of NPA. The pitfall is, however, not absent that the version and narrative including the Europe and Korea has a number of distinctive elements, and adaptation toward a common narrative about public aid of legal counseling, such concerned of machination of effective system or public funding, has to be scrutinized on the basis of different soils. This comparative examination of narrative and discourse can be an important point of contribution, especially if the meaning of the term, governance, is not always clear.

One Illustration

Let me illustrate one example showing relevance between the law and public policy. The following statement from the president of Korean bar association simply demonstrates that the public policy of staffing justices is interwoven with the organizational goal, i.e., better performance on the rule of law ideals (The Statement of Bar Association, 2015).

“The Supreme Court sitting *en banc* recently has showed a tendency yielding many judgments *per curiam* without a dissenting or separate opinion. This is because the staffing policy of supreme court justices had failed despite our history of public aspirations toward the diverse forum. The Supreme Court had consistently pledged that the diversity of supreme court justices will always be a priority, which, however, actually turned to be a bogus promise. It is a breach of promise against their avowing in the several occasions of Judicial Reform Committee and made when proposing the sensitive public agenda, i.e., small chamber system of Supreme Court. Although they share a thought that a more socially echoing judiciary is predicated upon the diversity of supreme court justices, the staffing committee within the supreme court recently nominated three candidates of judge career, which disregarded the public aspirations and persistent suggestions of bar association. This conservative professionalism had been pivoted on the court centrism which we argue to be corrected and to be sustainable only with the authoritative and classic notion of noble judiciary, the kind of quandary against the democratic tradition and truly outdated against the rising concern of due public administration on the Korean judiciary.”

Table *Supreme Court Justices According to their Career Background*

Japanese Supreme Court (15)		Korean Supreme Court (14)	
Justices from the Career Judges	6	Justices from Career Judges ●	14
Justices from Attorneys	4		
Justices from the Prosecution Officers	2		

Justices from other Occupation	3		
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- The number is argued if one justice immediately served as a law professor and the other justice was drawn upon the attorneys' pool/Nevertheless, they had an experience as a judge, three and five years respectively, during their entire career service period as a lawyer, which point is important to the critics of in- house preference.

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